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July 8, 2016

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Jocelyn Boyd
Chief Clerk and Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia, SC 29210

Re: Petition of the South Carolina Telephone Coalition to Require
Interconnected Voice over Internet Protocol ("Interconnected
VoIP") Service Providers to Contribute to the South Carolina
Universal Service Fund


Dear Ms. Boyd:

Enclosed for filing please find a Petition and Proposed Notice of Filing
and Hearing in the above matter.

Please contact me if you have any questions concerning the attached
filing. Thank you for your assistance.

Very truly yours,

McNAIR LAW FIRM, P.A.



Margaret M. Fox

Enclosure

cc: Nanette Edwards, Esquire, ORS
Jeffrey M. Nelson, Esquire, ORS

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COLUMBIA 1278609v1

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2016-____-C

In Re: Petition of the South Carolina Telephone Coalition)
To Require Interconnected Voice over Internet Protocol)
("Interconnected VoIP") Service Providers to Contribute)
To the South Carolina Universal Service Fund)
_____)

The South Carolina Telephone Coalition and its individual member companies ("SCTC") hereby petition the Public Service Commission of South Carolina ("Commission"), pursuant to S.C. Code Ann. § 58-9-280(E) and Commission Regulation 103-825, for a ruling that all carriers who offer interconnected Voice over Internet Protocol ("Interconnected VoIP") services in South Carolina are required to contribute to the South Carolina Universal Service Fund ("State USF") previously established by the Commission pursuant to S.C. Code Ann. § 58-9-280(E). In support of its Petition, SCTC would respectfully show unto this honorable Commission the following:

1. SCTC is a coalition of local exchange telephone companies organized and doing business under the laws of the State of South Carolina. SCTC's members are telephone companies or telephone cooperatives subject to the jurisdiction of this Commission. A list of SCTC companies is attached hereto as Exhibit A.

2. SCTC's individual member companies provide local exchange telephone service within their respective geographic service areas. SCTC's member companies are carriers of last resort and receive support from the state universal service fund ("State USF"). SCTC's member companies and their affiliates also contribute to the State USF.

3. S.C. Code Ann. § 58-9-280(E) provides in part: “In continuing South Carolina’s commitment to universally available basic local exchange telephone service at affordable rates ..., *and consistent with applicable federal policies*, the commission shall establish a universal service fund (USF) for distribution to a carrier(s) of last resort.” (Emphasis added.) The statute directs the Commission to adopt “such guidelines as may be necessary for the funding and management of the State USF,” and provides that the “guidelines *must not be inconsistent with applicable federal law*” *Id.* (emphasis added).

4. S.C. Code Ann. § 58-9-280(E)(2) states that the Commission “shall require all telecommunications companies providing telecommunications services within South Carolina to contribute to the USF as determined by the commission.”¹

5. FCC regulations define Interconnected VoIP service as a service that:

- (1) Enables real-time, two-way voice communications;
- (2) Requires a broadband connection from the user’s location;
- (3) Requires Internet protocol-compatible customer premises equipment (CPE); and
- (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

See 47 C.F.R. § 9.3.

6. VoIP has also been defined as “an internet application used to transmit voice communication over a broadband internet connection.” *Vonage v. Nebraska Pub. Serv. Comm’n*, 564 F.3d 900, 902 (8th Cir. 2009).

¹ Telecommunications services are defined in state and federal law. *See* S.C. Code Ann. § 58-9-10(15); 47 U.S.C. §§ 153(53) and (50).

7. The Commission has the authority to require providers of telecommunications service to contribute to State USF. *See* S.C. Code Ann. § 58-9-280(E)(2).

8. Although the Commission is prohibited from regulating broadband services by S.C. Code Ann. §58-9-280(G), that provision does not preclude the Commission from requiring providers of Interconnected VoIP services from contributing to the State USF. *See* S.C. Code Ann. § 58-9-280(E)(9).

9. The Federal Communications Commission (“FCC”) has declined to classify Interconnected VoIP as either a telecommunications or an information service under federal law.²

10. It is consistent with federal law and policy for the Commission to require Interconnected VoIP service providers to contribute to State USF without specifying the regulatory classification of those services, as the FCC has done with federal USF.³ It is also consistent with the way the Commission has treated similarly-situated carriers in the past. *See* Commission Order No. 2009-356(A).

11. In addition to the FCC requiring Interconnected VoIP providers to contribute to federal USF, other states have required Interconnected VoIP providers to contribute to their

² *See IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

³ *See Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format; IP-Enabled Services*, WC Docket Nos. 04-36, 06-122, CC Docket Nos. 90-571, 92-237, 95-116, 96-45, 98-170, 98-171, 99-200, NSD File No. L-OO-72, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7536, para. 34 (2006) (*Interim Contribution Methodology Order*, FCC 06-94), *aff'd in part and rev'd in part*, *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

respective state funds. The FCC has also acknowledged that states may assess Interconnected VoIP revenues for state universal service funds.⁴

12. SCTC is not seeking any expansion of the Commission's jurisdiction over Interconnected VoIP service or over any provider of such service. State law makes clear, however, that even where the Commission has limited jurisdiction over certain providers and services, the Commission retains jurisdiction to require competitive voice service providers to contribute to the State USF. *See, e.g.*, S.C. Code Ann. § 58-11-100(C) ("Nothing in [the section limiting the Commission's jurisdiction over wireless services] affects any jurisdiction conferred upon the commission by Section 58-9-280(E)(3)."); S.C. Code Ann. § 58-9-280(E)(9) ("Nothing in [the section limiting the Commission's jurisdiction over broadband services] shall preclude the commission from assessing broadband service revenues for purposes of contributions to the USF").

13. For purposes of USF contributions only, Interconnected VoIP service is functionally equivalent to voice service provided by telecommunications service providers. Interconnected VoIP service being provided by carriers pursuant to a Certificate of Public Convenience and Necessity issued by the Commission is the same service that is currently being provided by Interconnected VoIP service providers who operate without such certificates in South Carolina.

14. It is in the public interest to require all Interconnected VoIP providers to contribute to the State USF. The FCC found it was in the public interest to require Interconnected VoIP providers to contribute to federal USF because they, like other contributors, "benefit from

⁴ *See Universal Service Contribution Methodology, Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling*, WC Docket No. 06-122, 25 FCC Rcd 15651 (2010) (FCC 10-185).

universal service because much of the appeal of their services to consumers derives from the ability to place calls to and receive calls from the [Public Switched Telephone Network], which is supported by universal service mechanisms.”⁵ The FCC went on to note that Interconnected VoIP providers are “dependent on the widespread telecommunications network for the maintenance and expansion of their business,” and they “directly benefit[] from a larger and larger network.”⁶ The same is true at the state level.

15. Universal service policy favors competitive neutrality, *i.e.*, the principle that carriers who provide voice service, regardless of the technology employed or their particular business model, should contribute to universal service mechanisms on an equitable and nondiscriminatory basis.⁷ It is fair and equitable to treat similarly-situated carriers in a similar manner from a regulatory standpoint.

16. Requiring all Interconnected VoIP providers to contribute to State USF will level the playing field not only for Interconnected VoIP providers vis-à-vis other voice providers, but also among Interconnected VoIP providers themselves. Today, some Interconnected VoIP providers contribute to State USF while some do not. Clarification of these obligations on a prospective basis will ensure that providers of the same service are not subject to different regulatory treatment.

17. The preservation and advancement of universal service is an important public policy. The State USF benefits South Carolina citizens, providing support for basic local exchange telephone service provided by carriers of last resort in high-cost areas, thereby ensuring access to

⁵ See *Interim Methodology Contribution Order*, *infra*, at para. 43.

⁶ *Id.*, quoting *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 428 (5th Cir. 1999) (which found the same was true of paging carriers).

⁷ See 47 U.S.C. §§ 254(b)(4), 254(d); *Interim Methodology Contribution Order*, *infra*, at para. 44 (stating that Interconnected VoIP service is increasingly used to replace traditional voice service, and that contribution obligations should not shape decisions regarding technology used to offer voice services or to create opportunities for regulatory arbitrage.)


basic service at affordable rate, and at rates that are comparable for urban and rural areas. *See* Commission Order No. 2010-337 in Docket No. 2009-326-C, at p. 22. If equitable and adequate funding for universal service is not maintained, the result would be the degradation over time of the critical communication infrastructure that not only allows South Carolina citizens to enjoy high-quality, reliable communications service, but also has allowed the State to attract and retain industry and jobs.

WHEREFORE, for the reasons stated above, SCTC respectfully requests that the Commission

(1) enter a finding at its earliest opportunity that Interconnected VoIP service providers, regardless of whether they hold a Certificate of Public Convenience and Necessity issued by the Commission, must contribute to the State USF based on their retail voice communications services; and

(2) require Interconnected VoIP service providers who are not currently contributing to State USF to do so on a prospective basis.

Respectfully submitted,

By: 

M. John Bowen, Jr.

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ATTORNEYS FOR THE SOUTH CAROLINA
TELEPHONE COALITION

Columbia, South Carolina

July 8, 2016

EXHIBIT A

South Carolina Telephone Coalition Member Companies

Bluffton Telephone Company, Inc.
Chesnee Telephone Company
Chester Telephone Company, d/b/a TruVista
Comporium, Inc. (f/k/a Rock Hill Telephone Company)
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company, d/b/a Comporium
Hargray Telephone Company, Inc.
Home Telephone ILEC, LLC d/b/a Home Telecom
Horry Telephone Cooperative, Inc.
Lancaster Telephone Company, d/b/a Comporium
Lockhart Telephone Company, d/b/a TruVista
McClellanville Telephone Company (TDS)
Norway Telephone Company (TDS)
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
PBT Telecom, d/b/a Comporium
Ridgeway Telephone Company, d/b/a TruVista
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company (TDS)
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company (TDS)

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

CLERK'S OFFICE

NOTICE OF FILING AND HEARING

DOCKET NO. 2016-__-C

Docket Summary: South Carolina Telephone Coalition Petition to Require Interconnected Voice over Internet Protocol ("Interconnected VoIP") Service Providers to Contribute to the South Carolina Universal Service Fund

The South Carolina Telephone Coalition and its individual member companies ("SCTC") have filed with the Public Service Commission of South Carolina ("Commission") a Petition seeking to have the Commission make a ruling that all carriers who offer Interconnected Voice over Internet Protocol ("Interconnected VoIP") services in South Carolina are required to contribute to the South Carolina Universal Service Fund ("State USF") previously established by the Commission pursuant to S.C. Code Ann. §58-9-280(E).

A copy of the petition can be found on the Commission's website at www.psc.sc.gov under Docket No. 2016-__-C. Additionally, a copy of the petition is available from the Petitioner's representatives M. John Bowen, Jr., Esquire and Margaret M. Fox, Esquire, McNair Law Firm, P.A., Post Office Box 11390, Columbia, South Carolina 29211.

PLEASE TAKE NOTICE that a hearing, pursuant to 10 S.C. Code Ann. Regs. 103-817, on the above matter has been scheduled to begin on _____, in the Commission's Hearing Room at 101 Executive Center Drive, Saluda Building, Columbia, South Carolina 29210 for the purpose of receiving testimony and evidence from all interested parties.

Any person who wishes to participate in this matter as a party of record should file a Petition to Intervene in accordance with the Commission's Rules of Practice and Procedure on or before _____. For the receipt of future Commission correspondence, please include an email address in the Petition to Intervene. ***Please refer to Docket No. 2016-__-C and mail a copy to all other parties in this docket.*** Any person who wishes to testify and present evidence at the hearing should notify, in writing, the Commission; the Office of Regulatory Staff at 1401 Main Street, Suite 900, Columbia, South Carolina 29201; and the Petitioner's representative at the above address, on or before _____. ***Please refer to Docket No. 2016-__-C.***

For the most recent information regarding this docket, including any changes in scheduled dates included in this Notice, please refer to www.psc.sc.gov and ***Docket No. 2016-__-C.***

PLEASE TAKE NOTICE that any person who wishes to have his or her comments considered as part of the official record of this proceeding **MUST** present such comments in person to the Commission during the hearing.

Persons seeking information about the Commission's procedures should contact the Commission at (803) 896-5100 or visit its website at www.psc.sc.gov.

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